

# Kentucky Real Estate NEWS

A Publication of the Kentucky Real Estate Commission

## ANTITRUST LAW: HOW IT AFFECTS YOU

Perhaps one of the most complex legal issues that pertains to real estate agents and brokers is antitrust law. The basic thrust of antitrust law is that competitors cannot conspire to fix prices or to boycott other businesses in their industry.

Believe it or not, antitrust laws affect you, your business and your decisions on a daily basis. For example, each principal broker has the right to establish the fees that will be charged for his or her company's services only. Brokers may not legally discuss their fees or commissions with other brokers and may not conspire with other brokers to establish some "standard" or "set" fee. There is no "standard" or "set" fee for real estate services in Kentucky.

In addition, brokers and agents are prohibited from banding together to try to boycott other real estate firms or to try to run other real estate firms out of business. For instance, competitors cannot get together and agree not to show certain other companies' listings. Competitors also cannot agree to prevent certain buyers' agents from showing their listings.

Many agents and brokers in this state are members of a local Board of Realtors®. These Boards are trade organizations which could not even exist but for an exemption in the antitrust laws that allows such organizations to form.

However, that said, being a member of a Board of Realtors® requires heightened attention to the law. As part of your membership in a Board of Realtors®, for example, you will be attending meetings, classes and the like with your competitors. Make sure to be very careful at these gatherings that you do not engage in conversations with your competitors about price-fixing or boycotting.

If any of your competitors ever brings up one of these topics or begins discussing such issues, you must immediately cease that conversation and renounce what that person has said. If you are an agent, tell your broker. If you are a broker, tell your Board representative. Most Boards have developed an antitrust law policy. Ask your Board representative for this policy - and abide by it!

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## **Comments from the Chair**

**by: Jerry McMahan,**  
**Chairman**



**S**ince July 1, 2002 was the one year anniversary of the criminal background check implementation, I wanted to take a look at how the first year has affected new applicants. As you know, every applicant for licensure must now submit to a criminal background check prior to a license being issued. This includes current sales associate licensees who are wishing to upgrade to a broker's license and reciprocal applicants.

Luckily, the Commission has faced very few problems associated with the criminal background check. On average, it takes approximately 20 days for applicants to receive their fingerprint cards back from the Federal Bureau of Investigation. There have been a couple of circumstances where a person's fingerprints were unreadable. In those instances, the applicant has signed an affidavit verifying their criminal history.

If the applicant has been convicted of a felony at any time or a misdemeanor within the previous five years, the Commission may do one of two things. The applicant may be ordered to appear before the Commission for a hearing or the Commission can allow the applicant to proceed if it is determined that the conviction does not necessitate a hearing. All applicants with a felony conviction or misdemeanor within five years must meet the standards set out in

KRS 324.045, showing honesty, truthfulness and good reputation.

From July 1, 2001 to July 1, 2002, the Commission has had 19 felony hearings. Of the 19 applicants, 10 were approved to proceed with licensure, while 9 applicants were denied. Applicants are given the opportunity to address the Commission regarding their conviction(s). They may also bring character witnesses to speak on their behalf. Applicants who are denied may reapply again at a later date.

The Commission has seen a slight rise in investigations since the implementation of the criminal background check. From July 1, 2001 to July 1, 2002, there have been a total of 36 felony or misdemeanor investigations. Investigators for the Commission look into the applicant's conviction, personal background and past employment records.

I can speak for all of the Commissioners when I say that we take our roles very seriously when it comes to approving an applicant with a criminal record. The Commission would not want to grant a license to a person who could cause harm to an unsuspecting consumer or to another licensee.

The Commission is very pleased with the first year of this new law. It provides better protection not only for the consumer, but for the industry as a whole.

## From the Director's Desk

by: Norman Brown,  
Executive Director



Just recently, the Commission entered into an agreement with a publisher known as WestGroup to publish a new real estate law textbook. As many of you may recall, the Commission published a similar real estate law treatise in 1986 that was written by then-General Counsel Stephen L. Frank and entitled Real Estate Professionals and the Law.

It has now become necessary to re-write this book, as many real estate laws have changed over the years and the book has not been updated to keep up with the times. We are expecting a one-to-two-year turnaround for drafting, editing and publication.

Our new General Counsel, Lee Harris, has agreed to research and write the new law treatise. Once completed, a copy of the book will be delivered free of charge to all principal brokers. Copies will also be available to purchase for all sales associates and pre-license students throughout the state. We would also like to include copies of the treatise

on our website for quick review.

The textbook will cover all aspects of real estate law from antitrust issues to contract law to agency law to procuring cause cases to Truth in Lending regulations. We think this law book will be an excellent resource and tool for all of our brokerages to use whenever a legal problem or question arises in your day-to-day business. We also think that it can be used as an excellent training tool in both pre-license and continuing education courses.

If anyone has any ideas about topics that may be helpful to you, please let us know so we can consider including those topics in our book. Of course, if you have any legal questions in the meantime, you can always call our legal staff for answers.

As always, the Commission is committed to providing all of our licensees with the best legal resources in order to reduce your liability, protect consumers and promote growth in the real estate industry.

## Attention All Educators

Mark your calendars for two important conferences for real estate instructors. All approved instructors are welcome and encouraged to attend.

The Annual Real Estate Educators Conference will be held on October 24 and 25 and will focus on teaching techniques and tips for course development. The program will be a full two days in length and will also include a Legal Update. Co-sponsors along with the Commission will be the Kentucky Real Estate Appraisers Board, the Kentucky Real Estate Education Foundation, and the Kentucky Real Estate Educator's Association. The Conference will be held in Lexington, Ky. The workshop leader will be Dianna Brouthers, from South Carolina, a former REEA Educator of the Year, co-author, licensee, and presenter at the NAR Convention. She holds the GRI, LTG, ABR, and CBR designations and the DREI, ITI, and CAI instructor designations.

For more information on these programs, please contact Linda Poliskie or Sarah West at the Commission office. We hope to see you all there.

## Don't Make Another Cold Call Before You Read This!

Amendments to the telemarketing "**No Call List**" law went into effect on July 15, 2002. **ALL** licensees should be aware of this law and the penalties for violating the law. For more information, please logon to the Attorney General's website at [www.kycall0.net/](http://www.kycall0.net/).





## Commissioner's Corner



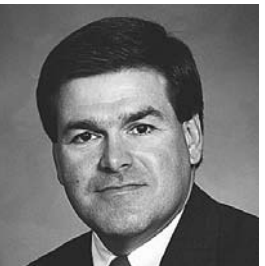
Betty Kaiser



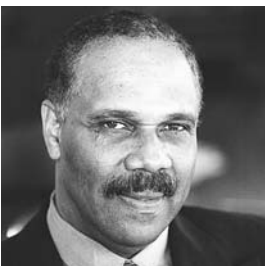
Arvel J. McMahan



Sue Teegarden



Bob Roberts



Ron Smith

# General Counsel Jeff Blair Resigns



The Commission is sad to announce that General Counsel Jeff Blair resigned from the Commission on April 15, 2002. He had worked for the Commission since April of 1996 and made many significant changes to improve the Commission's legal department.

When Jeff first came to the Commission he developed a Legal Strategic Plan. This enabled him to achieve many goals which greatly benefited the licensees of Kentucky. Jeff says: "I am proudest of the Commission's change in focus from 'prosecution' to mediation and the emphasis placed on education and settlement during the hearing process. We were able to do this without sacrificing effective consumer protection." In 1997, the Commission had a total of 162 complaints and 71 hearings. In 2001, the Commission received 97 complaints and only held 6 hearings. This is an incredible

statistic which shows the impact Jeff had here at the Commission.

A few more of Jeff's accomplishments were: comprehensive rewrite of the regulations, primary KREC lobbyist on two successful pieces of legislation in the General Assembly, implementation of a criminal background check, served as chairman of the first ARELLO law committee (ARELLO members regulate over 2 million licensees worldwide), handled numerous new issues involving technology and the Internet and Kentucky licensees, research and review of the inducement laws of all fifty states, author of numerous published legal articles including articles in *Realtor®* magazine, UK "Kentucky Real Estate Law and Practice," and various Real Estate Commission newsletters around the country, and creation of an extensive Legal section on the KREC website.

Jeff is traveling throughout Europe for the next six months. He plans on returning to Kentucky at Christmas and then moving to California in 2003.

Jeff will be greatly missed by the Commissioners and staff and the licensee population. We wish him much success in his new endeavor. Good luck Jeff!

## New Standards for Continuing Education Instructors

A new regulation, 201 KAR 11:460, which became effective on May 15, 2002, now mandates that continuing education instructors maintain a minimum rating of 85% on their evaluations in the areas of knowledge and presentation. The regulation outlines the process for monitoring and action that will be taken by the Commission for any continuing education instructor who falls below that level. The Commission believes that this new regulation will maintain an excellent level of instructing in the real estate education field.

# Lee Harris Appointed to the General Counsel Position



The Commission is very pleased to announce that former Staff Attorney Lee Harris has been appointed as the *NEW* General Counsel of the Kentucky Real Estate Commission. Her appointment became effective on May 16, 2002.

Lee first joined the Commission in September of 1998. As Staff Attorney, Lee focused on settle-

ment conferences, appeals, statute and regulatory changes and answering all incoming legal questions.

She also made herself available for on-site training and update seminars. Her availability was very well-received by the licensees. She never turned down any request for a seminar, and she traveled from one end of the state to the other educating licensees on the law. The Commission constantly receives compliments on Lee's approach and rapport with the licensees. Her same-day response and friendly demeanor always seem to be appreciated.

Prior to coming to the Commission, Lee worked as a civil litigator. She received a Bachelor's degree in

Politics in 1993 from Princeton University and a law degree from the University of Kentucky College of Law in 1996.

In her new position, Lee is continuing to answer licensee legal calls as well as drafting a new legal textbook, advising the Commission at its monthly meetings and working on legal articles for the newsletter.

Lee says: "I am so honored and pleased to be the new General Counsel for the Commission. We have been working on ideas to better assist you, our licensees, as well as the consumers of this state. I pledge to continue that work on your behalf and on behalf of this industry. Please feel free to contact me anytime, and I will be happy to help in any way I can."

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## ANTITRUST LAW

### Continued from Page 1

Many Boards have established form listing and purchase contracts. These contracts must have blanks in any space where a fee may be charged or a timeframe may be set out. There is no set fee and no set listing period. Every company has the right to charge what it wants and to take listings for as long or as short a period as it wants.

Another area where antitrust laws come into play is when you are attempting to create an agent-client relationship. When you go to a listing presentation, you should only speak to potential clients about what services your firm offers and what your firm charges for those services. Do not get into a discussion about other firms, other agents, their fees, etc. Moreover, if the potential client asks you what the "standard" fee is, do not answer that question, except to say that there is no "standard" fee.

Antitrust law extends to real estate advertising as well.

For example, competitors cannot collude with each other to boycott the local newspaper or to prevent certain companies from advertising in the local newspaper or homes-selling magazine. All real estate licenses are valid throughout the entire state, so agents and brokers can advertise in any city or county they choose regardless of whether they are a member of the local Board.

Principal brokers would be wise to establish his/her own company policy related to antitrust issues. Principal brokers should draft a written policy, teach all of his/her agents about the law and the ramifications for a breach of the law and then have all agents sign and follow the policy. What's more, if your sales associate comes to you and tells you that he or she was engaged in a conversation that implicated antitrust issues, take action and renounce that conversation.

The key to complying with antitrust law is to understand it. If there are areas of this law that you do not understand, seek out a continuing education class, ask your attorney about it, review your company or Board policy or read up on the issue.

## STAFF SPOTLIGHT



The Commission is very pleased to announce that Dianna Rogers is the latest member of the Commission family. Dianna joined us about a month ago as a legal assistant, and the Commission is fortunate to have her on board.

Dianna brings with her twelve years of experience as a legal secretary. She also worked as an assistant to a real estate agent for one year and obtained her sales associate license. This experience will be very helpful to her in her new position here.

While she is originally from Louisville, she lived in Lexington for the past four years and has recently moved back home.

Dianna resides in the East End of Louisville with her husband Jerry and they have three grown daughters.

When Dianna is not working at the Commission she enjoys reading, yard work and spending quality time with her husband.

Dianna will be in charge of processing criminal background checks, assisting with editing and proofing the new law treatise, organizing Commission agendas and preparing for hearings and settlement conferences.

About her new position, Dianna says: "I LOVE my job! With my background in legal work and my interest in the area of real estate, I feel I have found my niche. The staff is a joy to work with and office morale is very high."

## BEWARE OF PREDATORY LENDING



*By: Lee B. Harris, General Counsel*

In recent years, issues involving predatory lending have become rampant in the real estate industry. The best way to protect yourself and your clients from falling into a predatory lending trap is to be aware of the laws and to know where to turn if a problem arises.

Predatory lending can take many forms. For example, some companies target low-income or elderly people, seeking loans based upon the equity in their homes. The payments are oftentimes so large and the fees so usurious, that these individuals who once had solid equity in their homes end up losing that home because they cannot afford to pay the lender. In fact, more than 80 percent of people who take out a loan that is determined to fall into the predatory lending category end up losing that home to foreclosure.

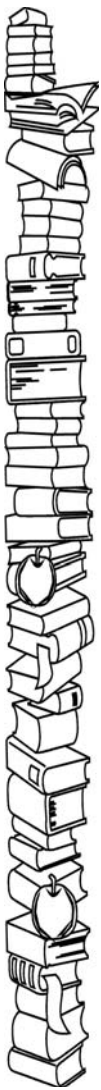
The key to eliminating this problem is educating both consumers and licensees about these types of loans. If you are representing a client, for instance, and you feel that he or she may be involved in a predatory lending situation, there are numerous agencies you can suggest that your client call for advice.

First of all, the Mortgage Broker Licensing Division of the Department of Financial Institutions regularly monitors banks and other financial institutions to ensure compliance with state laws. In addition, the Department of Housing and Urban Development ("HUD") has numerous programs to educate consumers about home purchases and financial issues. The Attorney General's Office has a Consumer Protection Division that regulates consumer fraud in this state. Finally, many cities and counties have local financial counseling centers that can advise buyers and sellers about financial decisions and even investigate complaints.

The best advice I can give is this -- if you are in a situation that you feel is either unlawful or predatory in any way, seek advice. If you determine that, indeed, the company you are working with is defrauding a consumer or the government, or both, run - do not walk - away from that situation. Report the wrongdoer. Follow up.

Three Commission staff members recently attended a seminar on predatory lending tactics and how to protect consumers against such tactics. The overwhelming solution mentioned at this seminar -- educate, educate, educate.





## **NEW Mandated Brokerage Management Course**

Beginning September 1, 2002, all applicants for a broker's license will be required to have completed a brokerage management course (three credit hours/48 classroom hours) as part of the real estate hours required for a broker's license. The number of total hours required for a broker's license has not increased. Please refer to KRS 324.046 (1) (a).

**Applicant Information:** Any person registering for the broker's examination to be held on or after September 1, 2002, will not be permitted to make a test reservation unless they have completed a brokerage management course. If a candidate takes the broker's examination after this date and it is later discovered that he/she had not completed this course, then the candidate is not eligible for a license, and the test scores will be voided.

Several questions on the content of this course will be included on the state portion of the broker's exam beginning September 1, 2002.

This new regulation (201 KAR 11:450) does not apply to broker candidates who are applying for a license through a reciprocal agreement with another state, since the fulfillment of the required education hours is typically not part of those agreements.

**Curriculum and Instructor Requirements:** The regulation mandates the use of an approved curriculum. Students must complete three projects and pass an approved closed book final examination in order to obtain credit for the course. All approved schools and accredited institutions must be using this curriculum after September 1, 2002. Schools may elect to begin using the curriculum prior to September 1 as long as their instructors have attended the mandatory training program that is also required under the new regulation.

**Acceptance of Courses in Brokerage Management:** Brokerage management courses

that were offered at approved Kentucky proprietary schools, or accredited Kentucky colleges or universities and held during the two-year period immediately prior to the implementation date of this regulation will be accepted (brokerage management courses with a completion date after September 1, 2000). Brokerage courses (worth three semester credit hours) taken at an accredited out of state college or university will also be accepted as long as they were completed after September 1, 2000. Any courses in brokerage management completed by an applicant prior to that date will not be accepted.

It is hoped that requiring this course will help to ensure that brokers are better trained to operate an office and that it will ultimately reduce the number of complaints and allegations that the principal broker did not provide the proper supervision to their sales associates.

## **MEGAN'S LAW**

### **Some Background and Information about Megan's Law**

By Lee B. Harris, General Counsel

Many agents and brokers have called me lately asking questions about how to handle Megan's Law issues. Megan's Law requires individuals who have been convicted of sexual crimes to register with law enforcement officials once they are released from incarceration.

### **Some Background**

In 1994, a little girl named Megan Kanka was abducted, molested and killed in her New Jersey

neighborhood by a man who was a repeat sex offender. Her parents were unaware that this repeat offender lived near their home. Megan's parents petitioned Congress to pass a law that would allow for the registration and dissemination of information about sex offenders. Megan's Law was indeed passed and signed into law on May 17, 1996.

Congress then mandated that the Department of Justice must develop a database of sex offenders and allow the states to develop and maintain their own databases. In addition, states were required to develop public notification procedures or risk losing federal funding for crime initiatives.

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## Ten Things You Should Know About MOLD

Recently, mold has become an issue in the real estate industry. The following is some data that you may need to know if a home has mold in it.

1. Potential health effects and symptoms associated with mold exposures include allergic reactions, asthma, and other respiratory complaints.
2. There is no practical way to eliminate all mold and mold spores in the indoor environment; the way to control indoor mold growth is to control moisture.
3. If mold is a problem in your home, you must clean up the mold and eliminate sources of moisture.
4. Fix the source of the water problem or leak to prevent mold growth.
5. Reduce indoor humidity (to 30-60%) to decrease mold growth by: venting bathrooms, dryers, and other moisture-generating sources to the outside; using air conditioners and de-humidifiers; increasing ventilation; and using exhaust fans whenever cooking, dishwashing, and cleaning.
6. Clean and dry any damp or wet building materials and furnishings within 24-48 hours to prevent mold growth.
7. Clean mold off hard surfaces with water and detergent and dry completely. Absorbent materials such as ceiling tiles, that are moldy may need to be replaced.
8. Prevent condensation: Reduce the potential for condensation on cold surfaces (i.e., windows, piping, exterior walls, roofs or floors) by adding insulation.
9. In areas where there is a perpetual moisture problem, do not install carpeting (i.e., by drinking fountains, by sinks, or on concrete floors with leaks or frequent condensation).
10. Molds can be found almost anywhere; they can grow on virtually any substance, providing moisture is present. There are molds that can grow on wood, paper, carpet and foods.

This information was pulled from [www.epa.gov](http://www.epa.gov).

## Kentucky Core Course "The End of A Cycle"

As you already know, all active Kentucky licensees (except those exempted) are required to fulfill their mandatory six (6) hours of continuing education by completing the Kentucky Core Law Course once every four (4) years. This Course was initiated to provide an updated and comprehensive review of license law changes to licensees.

The Course became mandated by law in 1999; therefore, December 2002 will mark the four-year anniversary of the law. Originally, persons with birth months of Jan-Feb-March were required to fulfill the requirement in 1999, and 2002 marks the last birth month cycle - Oct-Nov-Dec. This doesn't mean that you no longer need to complete the Core Law Course, it only means that the birth month cycle has ended.

It will no longer be necessary to keep track of the course by your birth month, just remember that it has to be taken 4 years from the last date you took it. For example, if you took the Core Course in 2001, you would be required to take it again on/before December 31, 2005. The Commission will mail out reminder notices at the beginning of every year to those individuals who need to complete the Kentucky Core Law Course. The Kentucky Real Estate Commission education staff can also assist you by accessing this information in our database.

Also keep in mind that the Kentucky Core Law Course is a 6-hour continuing education class. Therefore, no other continuing education is required in the same year in which it is taken.

The Kentucky Core Law Course schedule and provider listing may be accessed on our website ([www.krec.net](http://www.krec.net)) under the "Education" heading. In the event that you do not have internet access, you may receive the information through our Fax-On-Demand system, by calling 1-888 KREC-FAX (573-2329) and requesting document #607 at the prompt.

The Commission strives to keep the Kentucky Core Law Course as current as possible and continuously works with instructors on revisions and improvements. It is the Commission's desire that your knowledge of the laws governing your profession will be expanded through better educational offerings.





## FREQUENTLY ASKED QUESTIONS ABOUT EXCLUSIVE AGENCY AGREEMENTS

If a seller and a listing agent enter into an ***Exclusive Agency Agreement***, rather than an ***Exclusive Right to Sell Agreement***, the seller retains the right to sell the property himself without paying a commission, or agrees to pay a stated commission to any buyer's agent who produces a successful contract. In some listings, the seller may choose non-representation, or may agree to participate in certain parts of the process, such as setting his own appointments, showing the property, or even negotiating the purchase contract directly with the buyer or the buyer's agent. The following are some answers to frequently asked questions about Exclusive Agency Agreements or other types of listing company/seller agreements.

**Q.** What if I bring a buyer to a listed property, write an offer and the seller tells me the listing agent will not be involved in the transaction?

**A.** If you bring a buyer to view a property not listed by your company and you write an offer on the property, you should deliver the offer to the listing agent (please see 201 KAR 11:045 (Section 2)), unless the listing agent has waived the right to submit the offer and the buyer or the buyer's agent prefers or chooses to deal directly with the seller. The listing agent can waive this right in the "comments" section of the MLS listing.

**Q.** If I prefer to deliver the offer to the listing agent, what is the listing agent's responsibility once I deliver the offer?

**A.** The listing agent must submit the offer to the seller without delay (please see 201 KAR 11:045 (Section 1)). Examples of submission would be mailing, faxing, hand-delivering or arranging for pickup at the listing agent's office.

**Q.** Can I legally deal with the seller if the property is still listed?

**A.** Since the seller's property is listed by another real estate company, the law will prohibit you from negotiating directly with the seller (please see KRS 324.160(4)(p)), unless that right is waived by the seller and the listing agent. If the seller and the listing agent have waived the right of exclusive negotiation or contact, you may legally deal directly with the seller.

**Q.** What if the seller is listed as the "call coordinator" on the MLS? Can I legally talk to the seller?

**A.** Yes. If the seller has agreed with his agent to be a call coordinator, then the listing agent has waived his or her right to speak exclusively with the seller and is giving you permission to call the seller directly for an appointment.

**Q.** What if the seller tells me the listing agent has not provided a seller disclosure form?

**A.** All listing agents must provide the seller with a seller disclosure form for seller completion.

**Q.** What if the seller tells me the listing agent is not using agency disclosure forms?

**A.** All licensees are required to use agency disclosure forms unless the transaction is exempted from agency disclosure under the law. (Please remember that the forms no longer need to be exchanged between agents.)

**Q.** What if the seller tells me that the listing agent has not provided him with any information relative to lead-based paint?

**A.** Lead-based paint disclosure is a federal requirement and is not specifically enforced by the Real Estate Commission. The Real Estate Commission enforces state law only. However, the Real Estate Commission is not aware of any law or ruling which would exempt any listing agent from duties under the lead-based paint law. Please call 1-800-424-LEAD (5323) with any questions you have on this issue.

**Q.** When the property is listed through an Exclusive Agency Agreement, how should the advertising be handled?

**A.** KRS 324.117 requires all listed properties to be advertised in the name of the real estate company or the principal broker. The Commission suggests that, if you take an Exclusive Agency Agreement, you should inform the sellers in your listing agreement that they should put the name of the real estate company or the principal broker in any advertisements they may place on their own.

**Q.** What if the seller starts asking me for advice or has questions about the deal? How do I handle this?

**A.** If you are representing the buyer, do not allow the seller to put you into a situation which may be considered an implied agency role. If the seller starts asking you questions about the purchase contract, the best way to handle this is to inform the seller that you represent the buyer only and that any questions or concerns should be directed to the listing agent or to the seller's attorney.



## Disciplinary Actions



### **DARRELL NATHAN**

(Louisville) Case No. 01-0058

**Violation:** Mr. Nathan failed to disclose a sewer assessment to the buyer prior to her purchase of the home. Mr. Nathan admits to a violation of KRS 324.160 (4)(b).

**Disposition:** Mr. Nathan agreed to pay the buyer seven thousand one hundred and ninety dollars (\$7,190.00) within thirty (30) days of the Final Order. Mr. Nathan also agreed to pay a one thousand dollar (\$1,000.00) fine to the Commission within thirty (30) days of the Final Order.

### **ANTHONY ADAMS**

(Lexington) Case No. 01-0124

**Violation:** Mr. Adams failed to meet his continuing education

requirements for calendar year 1999 and failed to complete the delinquency plan for 1999, pursuant to KRS 324.085 & 201 KAR 11:230.

**Disposition:** Mr. Adams' license is suspended for two (2) years, beginning March 28, 2002.

### **TERRY GISH** (Henderson) Case No. 01-0068

**Violation:** Mr. Gish failed to answer the complaint filed against him. Mr. Gish was found in default and in violation of KRS 324.160 (4) (s) for utilizing his escrow account for improper purposes.

**Disposition:** Mr. Gish's license was revoked effective March 28, 2002.

### **GREGORY K. WEAVER**

(Clarksville, TN) Case No. 01-0059

**Violation:** Mr. Weaver stipulated to a violation of KRS 324.020 (2) for brokering real estate in Kentucky prior to obtaining his Kentucky real estate license.

**Disposition:** Mr. Weaver agreed to have his license placed on suspension for a period of three (3) months. The suspension will be probated for a period of six (6) months from the date of the Final Order. Mr. Weaver also agreed to pay \$3,578.00 to the complainants as a disgorgement of the fees he earned in Kentucky.

## Active Licensees who have not renewed for 2002/2003

The Commission has not received renewal payments for the following active licensees. If your name appears on this list and you want to renew your license, please contact the Commission's licensing department. These licensees were cancelled on April 1, 2002. Please note that this list is as of July 15, 2002.

James L. Atkins  
J. Robert Becker  
Phillip Blackburn  
Lillian Buckman  
Louis Buckman  
Bobby Carver  
Ronald L. Chapman  
Ellen E. Clayton  
Shelby Coffman  
Judith Curtin  
Fred Dorris  
David Droesch  
Aaron Durwin  
Chalmers Embry, Jr.  
F. Edward Grammer  
Hollis Graves

John T. Harris  
David Hils  
Carol Houston  
Robert Huber  
Geneva Kemp  
Robert Leathers  
David Logsdon  
Wayne Lollis  
Lloyd Lowry  
Wilma Lowry  
Charles Maples  
Joseph Marks  
Phillip Matthews  
Charles E. McAtee  
Michael McCluskey  
Helen McVicker

Shirley Meglemry  
David Meredith  
Paul Mik, Jr.  
Clement Mitchell  
Gregory Montgomery  
William Raines, Jr.  
Brenda Robertson  
Clay Scott  
Lynja Smith  
Phillip A. Sparks  
Edward Stephens  
Lois Summers  
John S. Tharp  
Walter E. Thomas  
Betty Webster  
Wallace G. Wilson

## MEGAN'S LAW

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Megan's Law is a very well-intentioned law that is designed to prevent crimes against children. However, the law is sometimes very difficult to implement. There is no perfect solution or answer to all the issues that are raised by this law. One of the problems with the law is that people are very mobile. A sex offender may register at one address and then move very quickly. The sheriff may indeed notify a seller that there is a registered sex offender in the area, and then that person may move without anyone's knowledge. By the same token, a sex offender may move into a particular neighborhood, and the residents, for one reason or another, may not immediately find out that the offender is there.

### How Megan's Law Affects You, the Licensee

This law affects your business when you list a home or represent a buyer in a neighborhood where a registered sex offender lives. The law only requires disclosure by law enforcement. It does not require real estate licensees or sellers to disclose information about sex offenders. Sometimes, however, a seller or an agent feels a moral obligation to

disclose such information, especially if the potential buyer has small children.

There is certainly nothing improper about a seller wanting to disclose this information. However, based upon the reasons outlined above, the seller's information might not be up-to-date or even accurate. If a seller wants to inform potential buyers that he has been notified of a registered sex offender in the area, he should check up on the information through the local sheriff's office or through the Kentucky State Police Registry website at [kspor.state.ky.us](http://kspor.state.ky.us) and encourage the buyer to do the same.

You may run into situations where you learn that a registered sex offender lives in a particular neighborhood where you have a listing. You may feel a moral obligation to disclose this information to potential buyers or to buyers' agents. If you discuss your misgivings with the seller and the seller wants to

disclose as well, then

you are both certainly free to do so. On the other hand, if you feel that disclosure is best and the seller does not want to disclose, you must decide whether to keep that listing. It is your fiduciary duty to abide by all lawful instructions of a seller. Since the law does not require disclosure, that seller may be legally justified in not disclosing. The decision on how to proceed will be yours at that point. You do not want to stigmatize a seller's property unnecessarily, but you are also not required to pursue a listing that goes against your personal views.

As a buyer's agent, you may run into a situation in which you are representing a buyer with small children and you find out that there may be a sex offender in the neighborhood where that buyer wants to move. Agents are often caught in a dilemma as to what to disclose and how.

Perhaps the best approach to Megan's Law is to develop a strategy prior to running into a dilemma. It is certainly advisable to contact your company's attorney to discuss how your company should handle Megan's Law issues --if at all.

If you have any questions, please feel free to contact me at the Commission.





## *COME SEE US AT THE KENTUCKY STATE FAIR*

The Commission will have a booth in the South Wing of the Kentucky State Fair this year. We invite all of you to stop by and meet our staff. The Fair begins on August 15 and ends on August 25. We hope to see you there!

### PERMANENT LICENSES

As a reminder, the Commission does not mail out new licenses at renewal. The only time you will receive a new license is if you make a change.

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